

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA, : :

Plaintiff,

Case No. 3:08-cr-126
Also 3:13-cv-009

-vs-

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:
JOSE JESUS VILLALBA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATIONS

The Court has reviewed the Second Supplemental Report and Recommendations of United States Magistrate Judge Michael R. Merz (Doc. No. 111), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired on May 30, 2014, hereby ADOPTS said Report and Recommendations.

It is therefore ORDERED that sub-claims 3 and 7 of Defendant's Motion to Vacate under 28 U.S.C. § 2255 be dismissed with prejudice. In accordance with the Court's prior Decision and Entry Adopting in Part and Rejecting in Part the Magistrate Judge's recommendations as to sub-claims 1, 2, 4, 5, 6, and 8, the whole Motion to Vacate is dismissed with prejudice. The Court finds that reasonable jurists would not disagree with this conclusion and denied Defendant a certificate of appealability. The Court further certifies to the Court of Appeals for the Sixth

Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

July 21, 2014.



Walter Herbert Rice
United States District Judge